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ORIGINAL

No. 85-137 (4)

Supreme Court, U.S.
FILED
JAN 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

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SUPREME COURT, U.S.

HENRY LAVADO, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

HENRY LAVADO, JR., in pro se
P.O. Box 518—061
Zephyrhills, Florida 34283

7-F

QUESTION PRESENTED FOR REVEEW

Whether the detention of Defendant Henry Lavado by local law enforcement officers for over an hour without conducting any interrogation or request for identification, while awaiting the arrival of federal drug enforcement agents amounted to an unlawful arrest; and whether the evidence and statements obtained following the arrival of the federal drug agents and the subsequent arrest of the Defendant were the fruit of an unlawfel arrest.

STATEMENT CONCERNING CITATIONS,
AUTHORITY AND THE LAW

The Petitioner, Henry Lavado, Jr., in pro se, submits to The Court that he is not trained in the law and does not know the Rules of The Court.

The Petitioner submits that he is presently incarceratee at Zephyrhills Correctional Institution, a state prison. Zephyrhills Correctional Institution does not have a law library, law clerks or the tools necessary to research and locate the law.

The Petitioner contends that he is sequestered from the law and is unable to change his situation without a punitive transfer to a distant and hostill institution.

Therefore, the Petitioner is unable to cite authority or the law.

JURISDICTION

The Petitioner was convicted of possession of marijuana with intent to distribute and conspiricy to possess with intent to distribute, in the United States District Court, Southern District, February 22, 1983.

The Petitioner was appointed counsel for purposes of appeal and an appeal was held in the United States Court of Appeals, Eleventh Circuit. The Court of appeals affirmed the Petitioner's conviction January 24, 1985.

The Petitioner's court appointed counsel agreed to seek a rehearing of the Eleventh Circuit Court of Appeals' decision or file a petition for writ of certiorari with the United States Supreme Court, February 1, 1985. The Petitioner submits that his court appointed counsel has failed to seek a rehearing of the Eleventh Circuit Court of Appeals' decision and has further failed to timely file a petition for writ of certiorari with the United States Supreme Court.

The Petitioner submits that he has done everything in his power to seek review of his conviction and that he is not responsiable for the untimeliness of his court appointed counsel. The Petitioner contends that he should not be denied a hearing of his petition

for writ of certiorari simply because his court appointed counsel has failed to timely file the petition.

Therefore, the Petitioner respectfully requests that The Court exercise its discretionary power and hear the Petitioner's petition for writ of certiorari.

STATEMENT OF THE FACTS

The Petitioner, while visiting friends, left Cape Romano in a small boat and went to the first island north of Cape Romano. At that point the Petitioner wondered off and got lost. (Tr. 452)

On August 28, 1982, at approximately 10:00 A.M., the Petitioner, seeking help, whistled at least twice to flag down a civilian on Sand Hill, a sand dune abour two miles from the beach. (Tr. 449)

The civilan, a biologist, agreed to help the Petitioner and took him to the Rookery Bay Marine Laboratory, approximately six miles south of Sand Hill. (Tr. 4[illegible] while at the laboratory, the Petitioner called Key West and requested assistance. (Tr. [illegible]-460)

Shortly after the Petitioner called Key West for assistence, at least four Collier County Sheriff's officers and one Marine Patrol officer arrived at the marine laboratory and blocked off the boat exit. (Tr. 100, 124, 446)

At that point in time the Petitioner was removed from inside the marine laboratory by the Collier County Sheriff's officers, placed outside the building and made to sit on the ground against the building wall. (Tr. 27, 99, 112, 114, 125-126) The Petitioner was not free to leave. (Tr. 100, 114, 125-127, 132, 503, 571) The Collier County Sheriff's officers kept the Petitioner seated on the ground for approximately one hour and did not conduct ay investigation whatsoever. (Tr. 26) The Collier County Sheriff's officers did not testify at the supression hearing or at trial. (Tr. 581-582)

After the Petitioner had been seated on the ground for approximately one hour, Agents of The Vice Presidential Task Force (refered to as customs agents throughout these proceedings arrived at the Rookery Bay Marine Laboratory and officially arrested the Petitioner. (Tr. 97, 99, 565)

The Petitioner did not hand over his wallet in response to a request for identification. (Tr. 103, 115, 118, 129) The Petitioner's wallet was obtained as the result of a post-arrest search. (Tr. 156)

Before trial, the Petitioner requested a supression hearing concerning statements and evidence obtained as a result of his arrest. The trial court denied the Petitioner's motion to supress. (Tr. 156)

ARGUMENT

The Eleventh Circuit Court of Appeals errored in applying U.S. v. Moore, 638 F.2d 1171 (9th Cir. 1980). The Petitioner, a United States Citizen, was siezed in Collier County, on the west coast of Florida, by four Collier County Sheriff's officers. The Collier County Sheriff's officers did not testify at the Petitioner's supression hearing or trial and there is no record as to why the Collier County Sheriff's officers stoped the Petitioner.

The Petitioner was not subject to a customs search at the boarder as in Moore, supra. The Petitioner was siezed by four Collier County Sheriff's officers at the Rookery Bay Marine Laboratory. The record does not indicate what, if any, information the siezing Collier County Sheriff's had. The Eleventh Circuit Court of Appeals ruled in the case sub judice, that "the most they (county officers) knew was that a vessel had been chased and had been siezed by the Coast Guard in the vicenity and that three males were at large." The Petitioner contends that the Rookery Bay Marine Laboratory in not the functional equival of the border. The four Collier County Sheriff's officers did not possess the necessary eliments in Moore, "continuous surveilance . . . or similar information", such as radar surveillance as in Moore.

The Eleventh Circuit Court of Appeals ruled in the case sub judice, that "the county officers did not have probable cause . . . (b)ut the officers did have reasonable suspicion. The Eleventh Circuit Court also ruled in the case sub judice that "(t)he county officers did not investigate." The Petitioner contends that the Collier County Sheriff's officer's failure to investigate and seek to affirm or dispell their suspicions rendered the sieture of Petitioner a warrantless arrest, absent probable cause and illegal.

The Eleventh Circuit Court of Appeals did not rule concerning the subsequent arrest by Agents of the Vice Presidential Task Force who arrived at the Rookery Bay Marine Laboratory approximately one hour after the Petitioner was siezed by the Collier County Sheriff's officers. Concerning this arrest, the Petitioner submits that it was a warrantless arrest. The Petitioner contends that the Agents of The Vice Presidential Task Force did not possess any more information than the Collier County Sheriff's officers and therefore, according to the Eleventh Circuit Court of Apreals' ruling that the Collier County Sheriff's officers did not have probable cause, the Agents of The Vice Presidential Task Force did not have probable cause either, rendering the Petitioner's subsequent arrest illegal.

The Eleventh Circuit Court of Appeals errored in ruling that the Petitioner "handed over his walled in response to a request for identification." During the supression hearing the trial court ruled concerning this issue. The trial court's rulling is as follows:

> THE COURT: I find that form the totality of the circumstances presented at this hearing on the motion, that they clearly fit the requirements of Cortez, found at 449 U.S. 411, and that the officer acted reasonably and in good faith in making the arrest. Appropriate Miranda warnings were given, prior to any statement sought to be admitted. Even if the wallet was removed after the arrest, I think it was obtained from the defendant Lavado as a result of a permissable postarrest search. (Tr. 156)(emphasis added)

Therefore, the Petitioner contends that the Collier County Sheriff's officers siezed the Petitioner at the Rookery Bay Marine Laboratory without probalbe couse. Althouth there is no direct testimony from the siezing officers, the Eleventh Circuit Court of Appeals has ruled that the siezing Collier County Sheriff's officers did have reasonable suspicion. The record clearly indicates and the Eleventh Circuit Court of Appeals has ruled, that the siezing Collier County Sheriff's officers did not conduct any investigation to affirm or dispell their suspicions. The Petitioner was siezed and held against his will for one hour, without probabe cause, diligent police investigation or exigent circumstances——simply siezed. This siezure amounted to an arrest absent probalbe cause and illegal. Evidence obtained as a result of this illegal arrest should not have been allowed at trial.

The Petitioner's subsequent arrest by Agents of the Vice Presidential Task Force was the result of the initial illegal siezure by the Collier County Sheriff's officers. Furthermore, these Agents did not have any more information than the Collier County Sheriff's officers. The Eleventh Circuit Court of Appeals has ruled that the information possessed by the Collier County Sheriff's officers did not constitute probable cause. The Agents did not possess any more information than the Collier County Sheriff's officers and therefore did not have probable cause. A warrentless arrest by Agents with less than probable cause is an illegal arrest. The fruits of an illegal arrest are inadmisable. The trial court errored in admitting the evidence obtained as a result of an illegal, warrentless siezure and arrest, absent probable cause. The Eleventh Circuit Court of Appeal errored in finding that the trial court correctly admitted the contested evidence.

CONCLUSION

The Petitioner was arrested in violation of the Fourth Amendment's prohibition against unreasonable search ad siezure. Evidence and statements obtained as a result of an illegal arrest were used at trial, over the objections of Petitioner. The use of inadmisable evidence at trial is reversiable error. The trial courts decision to allow the inadmisable evidence is reversiable error. The Eleventh Circuit Court of Appeals' decision affirming the lower court's admission of said evidence is in error.

Therefore, the petition for writ of certiorari should be granted.

Respectfully submitted,

Henry Lavado

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JANUARY 6, 1986